STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, and Ameritech Illinois Metro, Inc.	)	
	)	ICC Docket No. 98-0555
Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois, and the Reorganization of Ameritech Illinois Metro, Inc. in Accordance with Section 7-204 of the Public Utilities Act and for All Other Appropriate Relief	)	

REPLY TO JOINT APPLICANTS' RESPONSE

AT&T Communications of Illinois, Inc. and MCI WroldCom, Inc. hereby submit this reply to "Joint Applicants' Response to Certain Issues Relative To Shared Transport," filed November 9, 1999 ("Response") in this proceeding.

Throughout these proceedings, Joint Applicants have sought to reassure the Commission that with the merger, nothing will change as far as competition is concerned. The contentions and arguments advanced in the Response give reason to fear that Joint Applicants were correct and that in this respect they are (regrettably) being true to their word. The Merger Order required Joint Applicants to provide the "Texas" version of interim shared transport at "Texas" rates. They did not do so. In their Response, Joint Applicants purport to explain how and why their shared transport tariff filing was in compliance with the Commission's Merger Order, notwithstanding that it contains a "poison pill" collocation requirement, and they

proceed to announce the filing of a tariff that removes the collocation requirement. In the course of this filing Joint Applicants make a series of claims that cannot be left unanswered.

Joint Applicants begin by saying "it is important to understand the difference between interim shared transport -- which the Joint Applicants agreed to provide - and the UNE Platform - which the Joint Applicants did not agree to provide." (Response, at 2.) There is of course a difference between shared transport and the UNE Platform, and that difference has been manipulated by Ameritech and now the Joint Applicants since l996 - and it continues to be manipulated in their latest filing. The "long, contentious debate" that Joint Applicants refer to may be summarized simply: From the outset, Ameritech refused to make available the UNE Platform on various grounds, but principally it tied its argument to the contention that Shared Transport, as defined by the CLECs and by the FCC, was not a proper unbundled network element (in that it could not be physically separated from the Unbundled Local Switching element). This is an argument Ameritech made before this and other state commissions, at the FCC, on appeal all the way to the United States Supreme Court, and on remand before the FCC. Consequently, the debate over the UNE Platform became -- as a consequence of Ameritech's own argument -- a debate over shared transport.[1] In the merger proceeding, then, Joint Applicants made much over their commitment to finally make Shared Transport available, casting it as a major concession that supported approval of the merger. Now they say the promised to

[1] Thus, Joint Applicants are engaging in deliberate distortion in claiming that the UNE Platform entails an "entirely separate debate" before the State Commission and the FCC. Response, at 3.

offer Shared Transport (the "impediment" to offering the Platform) but never promised to offer the Platform itself. This is a semantic shell game, and it is an affront to this Commission.

The discussion in the Response is, moreover, erroneous and misleading. As pointed out in the Joint Motion, Mr. Appenzeller testified that Ameritech would make available the UNE Platform, which he explained as the "pre-assembled, pre-existing combination of unbundled network elements that could be used by a CLEC to provide end-to-end service." "In other words," he stated, "this would be a combination of local loop, shared transport, and local switching (and other associated elements already combined with those three elements)." The ULS-IST tariff filed by Ameritech, however, does not allow for this "pre-existing combination" (because, among other things, of the collocation requirement). Joint Applicants now attempt to explain that testimony by saying that it "addressed the company's *long term* intentions relative to the UNE Platform." (Response at fn.7 (emphasis supplied).) Yet nowhere in that testimony is the "long term" qualification stated, or even hinted at. Indeed, Mr. Appenzeller testified that "Ameritech Illinois will provide such a pre-assembled, end-to-end combination to CLECs *upon request*," not at some unspecified time in the future. [2]

Moreover, the shared transport filing that Joint Applicants did make as a consequence of the Merger Order is not only unusable, it is not consistent with their

[2] Moreover, Ameritech stated that these "pre-existing combinations" would be made available "unless and until the FCC or a reviewing court concludes that one or more of the underlying network elements does not satisfy the 'necessary and impair' standard of Section 251(d)(2) of the 1996 Act," i.e., pending the FCC remand order, which contradicts Joint Applicants latest "spin" on Mr. Appenzeller's testimony.

commitment in this proceeding or with that Order. The Merger Order specifically provides that Ameritech was to provide, prior to the merger closing date, proof that it had implemented in Illinois "the SBC/Texas Interim version of shared transport." (Merger Condition (28) A (emphasis supplied).) But the ULS-IST Tariff contains a requirement that CLECs collocate in each end office. That is a physical and practical impossibility, as Joint Applicants well know. Moreover, it is not consistent with the manner in which interim shared transport was made available in Texas, which did not and does not require collocation.[3] Thus, the contention that Joint Applicants complied with the Merger Order with respect to Shared Transport, even as (narrowly) construed by Joint Applicants, is both false and disingenuous.

Joint Applicants' Response continues to misrepresent and mischaracterize the underlying issues with respect to "Unbundled Local Switching with Shared Transport," just as Ameritech previously did as to Shared Transport. At p. 2 of their Response, they state:

> Shared transport is a combination of unbundled local switching and interoffice transport. This stand-alone local switching/interim shared transport offering is physically separate from any other UNEs (e.g., the local loop) or other services (e.g., directory assistance) as a matter of law and engineering fact.

First of all, shared transport is not a "combination." As the FCC has now reiterated, shared transport "meets the definition of an unbundled network element." (FCC

[3] Joint Applicants concede that collocation is not required in Texas (Response at fn. 3) but say that "this relates to the Texas UNE Platform offering, not to the Texas interim shared transport offering." This is only another example (albeit a particularly egregious one) of the same semantic argument used throughout the Response. Moreover, neither Ameritech witness Appenzeller nor SBC witness Hopfinger nor any other of Joint Applicants' witnesses who addressed interim shared transport ever disclosed that a collocation requirement would apply to anyone trying to use shared transport.

Remand Order at para. 372.) Moreover, Ameritech's characterization of the ULS-IST offering as "stand-alone" and "physically separate" from other UNEs is reminiscent of the argument Ameritech has long made and has now lost, yet again, as to Shared Transport. The FCC in its just-published UNE Remand Order recounted Ameritech's "separateness equals unbundled" claim with respect to Shared Transport:

> We reject Ameritech's arguments. The Supreme Court upheld the Commission's interpretation that the phrase "on an unbundled basis" in section 251(c) does not refer to physically separated elements but rather to separately priced elements. Shared transport is an "unbundled" element because it consists of separately priced switching and transport network elements. The fact [that] it is technically infeasible for a competitor to use shared transport with self-provisioned switching is irrelevant to whether an element is "unbundled" pursuant to section 251(c)(3).[4]

In any event, Joint Applicants persevere in their claim that ULS-IST is "stand alone" or "separate" merely in order to be able to argue that collocation needs to be made available in order for CLECs to combine ULS-IST with other UNEs. In other words, it is a rationalization for the collocation provision. But in fact it is no such thing: As Joint Applicants elsewhere recognize, collocation needs to be *available* under this scenario, but to make it a *requirement* is to make the ULS-IST tariff useless.

Further, Joint Applicants contend that the rates filed for shared transport are in compliance with the Merger Order and are in fact favorable to CLECs. One thing is undisputed, however: they are not the rates that SBC charged for interim shared

[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC docket No. 96-98, Third Report and Order, (released: November 5, 1999) ("UNE Remand Order") para. 372.

transport in Texas, and as a result they are not what the Merger Order required.[5] Merger Order at 250. If the terms of the Merger Order are to be enforced, Joint Applicants should be required to file the interim rates for shared transport from Texas, subject to true-up in the future when true Illinois TELRIC-based rates have been duly established and approved by the Commission.[6]

Finally, Joint Applicants announce the filing of a new tariff that will resolve these issues and "end the current confusion and acrimony." We will review and assess the tariff with interest.[7] In the end, however, the issue will be whether Joint Applicants have made available an offering that complies with this Commission's orders, the requirements of TA96, and that supports commercially viable entry by

[5] Joint Applicants indicate that instead of filing the Texas rates, they developed Illinois-specific rates based (in some unspecified way) on the Illinois "TELRIC-approved prices." Response, at 9. Interestingly, however, the interim usage rate for shared transport is 0.006497, whereas the Texas interim rate was 0.0034144. Moreover, accounting for SS7 call set-up of $0.0006 per call and the 0.0034144/MOU rate in Texas, a 4 minute call in Texas would cost $0.0142576, whereas the same call in Illinois could cost $0.025988, 82% higher than in Texas.

[6] Joint Applicants assert that their Illinois-based rates were "included in the tariff that was approved by the Commission." Of course the Commission did not "approve" the tariff, but merely permitted it to go into effect without suspension.

[7] At first blush there are still various limitations, e.g., relating to switching capability, on the offering. Moreover, it would plainly not allow CLECs to serve new customers via the UNE Platform or to provide additional lines for existing customers. These and other limitations are imported from the FCC UNE Remand Order. They are not consistent with this Commission's Wholesale/Platform Order, however, which was adopted under state law. See Order in Docket No. 95-0458/95-0531 at p. 64 (finding the requirements of Sec. 13-505.6 of the PUA satisfied by the platform petition). Additionally, at p. 5 of their response Joint Applicants state: "CLECs are entitled to strip operator and directory assistance traffic off the incumbent LEC's network at the serving end office and route it over dedicated facilities to their own OS/DA platforms. <u>This would also necessarily require a collocation arrangement.</u>" (Emphasis supplied.) Such collocation is not required in the Texas version of ULS-IST, however, and it would gut the effectiveness of a UNE Platform from the standpoint of a carrier such as AT&T with its own OS/DA platform.

CLECs into the incumbent's local exchange markets in Illinois. This history surrounding the current issues demonstrates the apparently inexhaustible supply of devices that can be employed to defer opening of these markets. Whether Ameritech intends to bring that pattern of conduct to an end remains to be seen.

CONCLUSION

For the foregoing reason as well as those set forth in the Verified Joint Application for Rehearing, the Commission should grant the Joint Application for Rehearing and modify its Merger Order as recommended therein.

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Respectfully submitted,

AT&T Communications of Illinois, Inc.

By: _____

William A. Davis, II
John F. Dunn
Cheryl Urbanski Hamill
AT&T Law Department
227 West Adams - Suite 1500
Chicago, IL 60606
(312) 230-2637
(312) 230-8211/8213 (facsimile)
Its Attorneys

MCI WorldCom, Inc.

By: _____

Darrell S. Townsley
205 North Michigan Avenue
Suite 3700
Chicago, IL 60601
(312) 470-3395
(312) 470-4929 (facsimile)
One of Its Attorneys